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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

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FEDERAL COMMUNICATIONS COMMISSION
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JOINT REPLY COMMENTS
OF BELL ATLANTIC¹ AND NYNEX²

The comments filed in this proceeding overwhelmingly make clear that, in adopting rules to increase the accessibility of programming to the hearing disabled, the Commission must be cognizant of the financial, logistical, and practical considerations of implementing its rules. Rules that disregard these considerations could have the effect of reducing the availability of captioned programming to hearing disabled consumers and diminishing the diversity of programming available to both disabled and non-disabled consumers, while increasing the cost of video programming to all consumers.

¹ The Bell Atlantic companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., Bell Atlantic-West Virginia, Inc., and Bell Atlantic Video Services Company.

² The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

The Commission Should Ensure That Closed Captioning Is Performed As Efficiently As Possible.

Entities involved in distributing video programming to consumers uniformly demonstrate that captioning can most efficiently and logically be done by the program producer or owner. E.g. Comments of Cox Enterprises, Inc.; Comments of DirecTV, Inc. at 3-6; Comments of Encore Media Corporation at 5-7; Comments of the Wireless Cable Association International, Inc. at 3-11. By contrast, the few arguments raised by program producers for imposing the obligation on multi-channel video programming distributors (MVPDs) or other distributors either show why such rules would be illogical and inefficient, or boil down to an argument that they do not want to be subject to Commission regulation.

For example, Home Box Office argues that a ten-year transition period is needed because pre-existing agreements do not provide for captioning by the program producer. As a result, each licensee will have to caption the programming. “The resulting multiple, inefficient captioning efforts will place a duplicative burden on various segments of the television distribution system. For some period of time, then, limited captioning resources necessarily will be devoted to multiple captioning of single programs, rather than to increasing the overall number of captioned program titles available.” HBO Comments at 8. According to HBO, a ten-year transition will allow contracts to “run their course” and parties to negotiate new ones “allocat[ing] captioning resources more efficiently.” *Id.* at 8-9. Of course, if the requirement to caption programming were placed on program producers instead of MVPDs or other distributors, there would be no need to wait until the contracts expired. Instead, limited captioning resources could be devoted immediately to increasing the amount of captioned programming available. Hearing disabled

consumers would have access to a broader range of captioned programming sooner, and costs to all consumers of video programming would be reduced.

Similarly, the Motion Picture Association of America (“MPAA”) argues that program owners should not be held responsible for ensuring compliance with the captioning rules because doing so “would require the FCC to parse complex contractual relationships to determine, in each instance of a claimed captioning violation, which of several entities holding concurrent rights to a video product is responsible for the violation.”³ The very complexity of the copyright “ownership” interests in a particular video program, however, underscore the difficulties with requiring MVPDs to ensure that programming is captioned. As Bell Atlantic and NYNEX pointed out in their initial comments, only the copyright owner can reproduce, modify, translate, or interpret his or her copyrighted material. Programming distributors or network operators would be at substantial legal risk for copyright infringement if required to alter such programming by superimposing captioning.

Fundamentally, entities involved in producing programming do not argue that MVPDs can caption programming more efficiently than the producers can;⁴ instead, their arguments boil down to an aversion to being subject to Commission regulation. See, e.g., Comments of the A&E Television Networks, et al. at 18-20 (Commission has not exercised jurisdiction in the past

³ MPAA at 3. MPAA also argues that MVPDs should be responsible for captioning because the Commission proposes to use a complaint-based enforcement system and consumers would not know how to identify the correct “owner” of programming they might wish to complain about. *Id.* at 3-4. As discussed further below, it makes no sense to design grossly inefficient and burdensome rules simply to accommodate one proposed enforcement mechanism.

⁴ Indeed, as discussed above, HBO acknowledges that the Commission’s proposal will result in inefficient use of captioning resources.

over program producers, but has exercised jurisdiction over cable operators and other MVPDs).⁵ That aversion, however, is not a sufficient justification for jury-rigging a regulatory scheme that would impose an inefficient and costly burden on MVPDs as an indirect means of getting program producers to caption the programming that they create. Instead, the Commission should place the obligation for captioning new, non-exempt programming on the program producer or creator, and should require all entities that distribute programming directly to consumers -- and all operators of the underlying transmission media, to the extent they are different entities -- to deliver captioning that is included in programming intact to end users.

CONCLUSION


Bell Atlantic and NYNEX are committed to ensuring that their telecommunications services are accessible and widely marketed to a broad range of diverse users, including individuals with disabilities. The companies support efforts to increase the availability of captioned programming. All customers will benefit if captioning is done as efficiently as possible -- more captioned programming will be available and costs will be lower. The Commission should, therefore, adopt rules placing the obligation to caption programming on

⁵ Grupo Televisa, S.A. argues that foreign program owners and producers cannot be regulated by the Commission. Comments at 3; see also MPAA Comments at 3. This is not, however, a reason to exempt all program owners and producers from Commission jurisdiction.

the program producer and creator. The Commission should also require that all system operators -- whatever the transmission technology -- deliver existing captions intact to all customers served by the system.

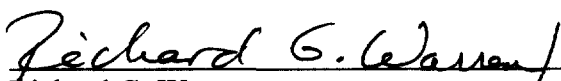
Respectfully submitted,

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